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FROM DIRECTORS OFFICE

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TECHNOLOGY CENTER 3600

In re Application of :
Zhen-Man Lin : **DECISION ON PETITION**
Application No. 10/029,951 : **TO WITHDRAW THE**
Filed: December 31, 2001 : **HOLDING OF ABANDONMENT**
For: **DEVICE FOR PRECAUTION SKYJACKING**
AND SYSTEM

This is a decision on applicant's letter filed January 14, 2004 by facsimile transmission, which is taken as a petition to withdraw the holding of abandonment under 35 U.S.C. 1.181.

The petition is **DENIED**.

A review of the file record reveals that a Final Office action rejection was mailed on June 20, 2003, setting a three-month shortened statutory period for reply. Therefore, a response was due by September 20, 2003. Applicant had the option of requesting and purchasing extensions of time under the provisions of 37 CFR 1.136(a), which were available for purchase, for up to six months from the June 20, 2003 mailing date of the Office action. Applicant filed a response on December 9, 2003, with no request for the purchase of extensions of time. Having not responded within the three-month shortened statutory period for reply, and having not requested and purchased extensions of time, the application became abandoned at midnight on December 20, 2003. A notice of abandonment was mailed on January 7, 2004.

On January 14, 2004 applicant filed the present petition by facsimile transmission. In his petition applicant explains that he responded to the June 20, 2003 Office action by "registration mail" on November 28, 2003.

Applicant's petition is insufficient to withdraw the holding of abandonment. In this regard, applicant's response received by the USPTO on December 9, 2003, was received well outside the three-month shortened statutory time period for reply set in the Office action of June 20, 2003. Since no extensions of time were requested and purchased by applicant, the December 9, 2003 was late, and the application was properly held abandoned.

Thus, there is no Office error and the holding of abandonment will not be withdrawn.

Applicant may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

I. Unavoidable Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(l); and (3) an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

II. Unintentional Delay

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The petition fee required by law for filing a petition under unavoidable standard is \$500. The fee for a petition under the unintentional standard is \$1,500. If applicant has, or can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive. The required items should be promptly submitted under a cover letter entitled "Petition to Revive."


Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Randolph Building
401 Dulany Street
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Telephone inquiries should be directed to the Office of Petitions Staff at (571) 272-3282.



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RAR/rwg: 11/3/05